

# 立法會 *Legislative Council*

LC Paper No. CB(4)890/16-17(08)

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## **Panel on Transport**

### **Subcommittee on Matters Relating to Railways Meeting on 28 April 2017**

#### **Updated background brief on the review of the Mass Transit Railway By-laws and Mass Transit Railway (North-west Railway) Bylaw**

#### **Purpose**

This paper provides background information on the review of the Mass Transit Railway By-laws (Cap. 556B) ("MTR By-laws") and the Mass Transit Railway (North-west Railway) Bylaw (Cap. 556H) ("MTR(NWR) Bylaw") (hereinafter collectively referred to as "the two sets of bylaws") conducted by the MTR Corporation Limited ("MTRCL"). It also summarizes the major views and concerns expressed by the Legislative Council ("LegCo") Members during previous discussions on the subject.

#### **Background**

2. Pursuant to section 34 of the Mass Transit Railway Ordinance (Cap. 556), MTRCL may make bylaws for the purpose of prescribing the conditions relating to the use of its service. Bylaws made in this way are subject to the approval of LegCo. MTRCL may also, pursuant to the stipulations of the bylaws, make detailed regulations via notices on daily operational issues, such as restriction on size of luggage, restricted areas in railway premises where entry of passengers is forbidden because of safety and areas where smoking is prohibited. For notices on matters that may arouse wide public concern, MTRCL will consult the public for their views.

#### Merger of MTR and Kowloon-Canton Railway systems

3. Due to the rail merger in 2007, the original bylaws which were respectively applicable to the ex-MTR and ex-Kowloon-Canton Railway

("KCR") heavy rail networks were combined into the existing MTR Bylaws, while due to the different operating environment and nature of the Light Rail network from the heavy rails, another set of bylaws, i.e. MTR(NWR) Bylaw, which was adopted from KCR Corporation's North-West Railway By-laws, applies to the Light Rail network.<sup>1</sup> To implement the rail merger, amendments to the relevant subsidiary legislation were needed to bring across the relevant parts of the regulations and bylaws made under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) ("KCRC Ordinance") for adoption under the MTR Ordinance, whereas all regulations and bylaws made under the KCRC Ordinance had been suspended during the service concession period.

4. In May 2007, a Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger ("Rail Merger Subcommittee") was formed under the House Committee to study the merger-related draft subsidiary legislation. During its deliberations, the Rail Merger Subcommittee made suggestions on the following areas:

- (a) the consistency between the two sets of bylaws;
- (b) the proposed maximum penalty levels under the two sets of bylaws for various offences (e.g. illegal hawking and use of abusive language on railway premises) which are not related to safety and security of railway operations; and
- (c) the drafting of certain provisions (e.g. those relating to the use of abusive language and compliance with notice on railway premises).

In this connection, MTRCL undertook to conduct a comprehensive review of the two sets of bylaws within 12 months after the rail merger,<sup>2</sup> taking into account the experience of operating the integrated railway system after the rail merger, as well as the views expressed by members of the Rail Merger Subcommittee. A summary of MTRCL's responses to members' views and proposed amendments pursuant to the review is in **Appendix I**.

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<sup>1</sup> The MTR(NWR) Bylaw also covers the feeder bus service provided in Northwest New Territories.

<sup>2</sup> The Rail Merger Bill was passed by LegCo on 8 June 2007 and the appointed day of the rail merger was on 2 December 2007.

5. In January 2009 and June 2010, MTRCL submitted to the Subcommittee on Matters Relating to Railways ("the Railways Subcommittee") proposals on amendments of two sets of bylaws.<sup>3</sup> However, after several rounds of discussion, the Transport and Housing Bureau and MTRCL considered that the views expressed by members of the Railways Subcommittee on the definition and scope of certain terms in the original provisions, such as "abusive language" and "improper dressing" were diverse, and that no clear direction on the proposed amendments was formed. Yet, there was no subsequent discussion on the proposed amendments in LegCo since then. Having reviewed the operation of the two sets of bylaws since the rail merger, MTRCL concluded that the two sets of bylaws, by and large, adequately serve the purpose of facilitating proper and efficient railway services, and as such, there was no imminent need to amend the bylaws.

6. In April 2016, MTRCL briefed the Railways Subcommittee on its proposal to reactivate the review of the two sets of bylaws based on the amendments proposed by MTRCL in 2010 and the views of LegCo Members back then. The review was expected to complete in around one year's time and the outcome will be submitted to the Railways Subcommittee.

### **Major concerns raised by members**

7. Members of the Railways Subcommittee were consulted on the review of the two sets of bylaws at its meetings on 16 January 2009, 4 June 2010 and 19 April 2016. Their major views and concerns are summarized in the ensuing paragraphs.

#### Use of abusive language

8. Section 22(1)(a) of MTR(NWR) Bylaw provides that no person shall at any time while upon the railway premises "use any threatening, abusive, obscene or offensive language or behave in a riotous, disorderly, indecent or offensive manner". Members considered that it was necessary to provide a clear definition of "use of abusive language" for the purpose of clarity. At the meeting of the Railways Subcommittee in April 2016, MTRCL advised that it would further review if the clause should be amended to prohibiting "any threatening, abusive, obscene or offensive language likely to cause annoyance or offence to any person".

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<sup>3</sup> The proposed amendments were set out in LC Paper Nos. CB(1)557/08-09(08) and CB(1)2089/09-10(01).

### Improper dressing

9. At the Subcommittee meeting on 16 January 2009, members opined that the definition of "improper dressing" under the relevant provisions of the MTR By-laws was unclear. MTRCL then proposed in May 2010 to amend the bylaw to "prohibit dressing or clothing, in the reasonable opinion of an official, in a condition liable to soil or damage the dress or clothing or personal effects of any other person".

### Consumption of food and beverage on railway premises

10. Members questioned about the definition, enforcement actions and penalty levels relating to the consumption of food and beverage. MTRCL responded that passengers who consumed food or beverage on railway premises in breach of the two sets of bylaws would first be advised that they were breaching the relevant bylaw and asked to cease eating or drinking. If a passenger complied with the inspector's request, a warning would be given; if a passenger refused to comply with the inspector's request, an infringement notice would be issued.

11. A member had suggested that MTRCL should allow passengers to consume water in paid areas. She also pointed out that there was inconsistency in the Chinese and English versions of the clause "consumption of food or beverage" as the term "beverage" (which excluded water) was used in the English version but the Chinese version "任何飲品" could be interpreted as including water. MTRCL undertook to look into the member's suggestions.

### Loitering

12. Some members considered that MTRCL should repeal the offence of loitering under the two sets of bylaws. They opined that the vast railway premises' area made the clause "no person should loiter in or about any part of the railway premises" unreasonable. Further, the definition of loitering as stated in the two sets of bylaws did not include an intent to commit an arrestable offence but such intent was required in the statutory offence of loitering.

### Fares and tickets

13. Members requested MTRCL to consider adding provisions to relevant bylaw clearly stipulating its responsibility regarding the refund of overcharged fare to passengers by Octopus devices. They also asked about MTRCL's guidelines on the exercise of discretion by staff on the waiver of

surcharges imposed on passengers travelling First Class on East Rail Line without paying a premium in advance or travelling without valid tickets.

14. MTRCL replied that under normal circumstances, as established procedure and test had been put in place to ensure correct deduction of fares, it was unlikely that fares were overcharged by the fare collection system. In any case if fares were overcharged, MTRCL would, upon receipt of a genuine claim, refund any sum which it had overcharged. If fares were overcharged as a result of an error in the fare collection system, MTRCL would post notices at the relevant stations to inform affected passengers that they might seek refund of the overcharged sum.

15. MTRCL also advised that its station staff and Ticket Inspection Unit staff performed ticket inspection work within the MTR area from time to time every day. Depending on individual cases and special circumstances (e.g. first-time offenders who were not wilfully breaching the MTR By-laws), front-line staff of MTRCL might consider issuing written warnings instead of imposing a surcharge on the passenger immediately.

#### Enforcement of luggage-related provisions

16. As parallel traders had caused inconvenience to other passengers when they carried large pieces of luggage within railway stations and trains, members were all along concerned about MTRCL's handling on oversized luggage. According to the Administration, oversized or excessively long objects might obstruct or trip passengers, prevent train doors from opening and closing, obstruct evacuation in times of emergency, or even pose danger if these objects were too close to overhead line. In view of strong public views concerning parallel traders carrying large pieces of luggage, the Administration had requested strict enforcement of the related bylaws by MTRCL. Furthermore, MTRCL set up the Bylaws Inspection Unit in April 2009 for the enforcement of the MTR By-laws and the Conditions of Carriage of Luggage.

17. When members discussed the Registration Scheme for Carriage of Oversized Musical Instruments ("the Scheme") at the meeting of the Railways Subcommittee in April 2016,<sup>4</sup> some of them considered that requiring passengers to register before they could carry musical instruments exceeding the prescribed dimensions into the MTR network would bring them undue inconvenience. There was also a view that MTRCL should not impose restrictions on the carriage of sports equipment, as most of these passengers were students who used MTR as their main mode of transport.

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<sup>4</sup> The Scheme allowed passengers with prior registration to carry oversized musical instruments when travelling on MTR during non-peak hours.

MTRCL explained that the Scheme was introduced having regard to safety and operational needs of the railway as well as passengers' demand.

#### Unauthorized display or materials for the purpose of advertisements

18. Members asked about the regulation of publicity activities conducted by some political organizations inside MTR stations, and non-commercial publicity activities by some passengers within the paid areas. MTRCL advised that in case where passengers or railway services were disturbed by other passengers' behaviour, MTRCL staff would advise the concerned passengers to stop the behaviour, and serve the concerned passengers written warnings where appropriate. As regards unapproved activities on MTR premises, MTRCL would issue written warnings to the concerned organizations/individuals, and forward details of relevant cases to MTRCL's legal department for considering the appropriate action, including taking legal actions accordingly.

#### Trainings and guidelines for MTR staff

19. Members enquired about the training and guidelines for MTR staff on the enforcement of the bylaws and the approach of the enforcement work. MTRCL indicated that it would arrange regular training to the staff who dealt with enforcement of the bylaws, so that they would be sufficiently familiarized with the bylaws and relevant operational guidelines when handling passengers who breached the MTR By-laws. MTRCL had been strengthening its staff training and communication in this regard.

#### Publicity and educational campaigns

20. Members considered it very important for MTRCL to strengthen public education campaigns so as to increase community awareness of the two sets of bylaws and protect its staff from unnecessary conflicts with the passengers. It was suggested that advertisements to promote key clauses of the two sets of bylaws be placed at conspicuous spots in MTR stations.

#### **Relevant questions raised at Council meetings**

21. During the Fourth and Fifth LegCo, eight questions concerning bylaws of MTR and related matters were raised at Council meetings. The hyperlinks to the questions and the Administration's responses, together with other relevant papers, are in **Appendix II**.

### **Latest development**

22. The Administration and MTRCL plan to brief members on the review of the two sets of bylaws at the meeting of the Railways Subcommittee to be held on 28 April 2017.

Council Business Division 4  
Legislative Council Secretariat  
25 April 2017

**Review of the Mass Transit Railway By-laws and  
the Mass Transit Railway (North-west Railway) Bylaw**

**Part I – Clarity and Obsolescence**

A. Responses of the MTR Corporation Limited ("MTRCL") to concerns raised by the Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger ("the Subcommittee")

	<b>Bylaws/offences</b>	<b>Responses</b>
1.	<p><b>Wrongfully entering or leaving trains</b></p> <ul style="list-style-type: none"> <li>- Mass Transit Railway By-laws ("MTR By-laws") 9(2)</li> <li>- Mass Transit Railway (North-west Railway) Bylaw ("NWR Bylaw") 16(c)</li> </ul>	Will provide for an exemption in situation where there is an accident or an emergency.
2.	<p><b>Compliance with notices</b></p> <ul style="list-style-type: none"> <li>- MTR By-laws 21(1)</li> <li>- NWR Bylaw 18 (1)</li> </ul>	MTRCL proposes that all notices relating to an infringement or contravention will in future have a written reference to not only the relevant bylaw but also the applicable penalty.
3.	<p><b>No eating or drinking</b></p> <ul style="list-style-type: none"> <li>- MTR By-laws 27(b)</li> <li>- NWR Bylaw 25(b)</li> <li>-</li> </ul>	Will delete "attempt to consume" from the MTR By-laws to avoid confusion.
4.	<p><b>Queuing</b></p> <ul style="list-style-type: none"> <li>- MTR By-laws 28C(3) and 28C(4)</li> </ul>	Section 34 of the MTR Ordinance provides that MTRCL can make bylaws to regulate the conduct of members of the public using the railway or on railway premises. Hence, MTR By-laws 28C is not ultra vires and no amendments will be made.



	<b>Bylaws/offences</b>	<b>Responses</b>
5.	<b>Intoxication</b> - MTR By-laws 28F - NWR Bylaw 23	Both bylaws will be amended by replacing "as determined by an official in his absolute discretion" with "determination by an official in accordance with his belief or reasonable cause to believe".  The adoption of language which refers to a state of intoxication "resulting from consuming or abusing alcohol, medicine or drug" in the MTR By-laws into the NWR Bylaw to better define "intoxication".
6.	<b>Abusive language</b> - MTR By-laws 28H(1)(a) - NWR Bylaw 22(1)(a)	Will not provide exemption for use of abusive language in private conversation given that the possibility of private conversation being caught by the bylaw is very remote as only abusive language which manifests itself as a disturbance to other passengers will be caught by this provision.  Penalty being reduced (see item A2 of <b>Part II-Penalties</b> ).
7.	<b>Loitering</b> - MTR By-laws 31 - NWR Bylaw 28	To be repealed.
8.	<b>Bill posting, etc., unauthorized display of materials for the purpose of advertisement, etc.</b> - MTR By-laws 32 - MTR By-laws 32A - NWR Bylaw 26	No amendment as it is inappropriate to limit the scope of the bylaw since non-commercial promotion activities can also affect smooth passenger flow.
9.	<b>Disposal of lost property</b> - MTR By-laws 41(1)(c) - NWR 36(1)(b)	Extend the lost property retention period from one month to three months.

B. Other amendments proposed by MTRCL pursuant to the review

- **Authorized crossing places and conditions of crossing (MTR By-laws 3A)**  
This is an obsolete provision and will be repealed since there is no longer designated crossing for animals, etc.
- **Firearms (MTR By-laws 38)**  
There is no equivalent provision in the NWR Bylaw. In the interests of consistency it is proposed to adopt the MTR By-laws into the NWR Bylaw.
- **Nuisance (MTR By-laws 25)**  
There is no equivalent in the NWR Bylaw. In the interests of consistency it is proposed to adopt the MTR By-laws into the NWR Bylaw.
- **Damage to railway premises (MTR By-laws 5, NWR Bylaw 16(e))/Improper operation of equipment (MTR By-laws 28A, NWR Bylaw 16(e))**  
Whilst the importance of these bylaws cannot be under-estimated MTRCL, upon review, accepts that an exception should be made for persons who genuinely acted in the belief that there was an emergency or that the damage sustained was the result of a genuine accident.

**Part II – Penalties**

A. Responses of MTRCL to concerns raised by the Subcommittee

	Bylaw/ offences	Existing penalty		Proposed amendments
		Mass Transit Railway By- laws ("MTR By-laws")	Mass Transit Railway (North-west Railway) Bylaw ("NWR Bylaw")	
1.	Playing radios, cassettes, musical instruments in railway premises	Bylaw 26, 26A \$2,000 fine	Bylaw 24 \$2,000 fine	Exempt noise created by mobile phone ringtones generated from incoming calls.
2.	Use of abusive language	Bylaw 28H(1)(a) \$5,000 fine	Bylaw 22(1)(a) \$5,000 fine	Penalty to be reduced to \$2,000.
3.	Hawking	Bylaw 30 \$5,000 fine and six months imprisonment	Bylaw 27 \$5,000 fine and six months imprisonment	MTRCL has considered a two-tier penalty adopted under the Public Health and Municipal Services Ordinance (Cap. 132), but decided to reduce the penalty level by removing imprisonment instead.
4.	Loitering	Bylaw 31 \$2,000 fine	Bylaw 28 \$2,000 fine	To be repealed.

	Bylaw/ offences	Existing penalty		Proposed amendments
		Mass Transit Railway By- laws ("MTR By-laws")	Mass Transit Railway (North-west Railway) Bylaw ("NWR Bylaw")	
5.	Bill posting, unauthorized display of material for the purpose of advertisement, etc.	<p>Bylaw 32 – Bill posting, etc. Penalty – \$5,000 fine and three months imprisonment</p> <p>Bylaw 32A – Unauthorized display of material for the purpose of advertisement, etc. Penalty – \$5,000 fine</p>	<p>Bylaw 26 – Unauthorized bill posting, advertising and touting Penalty – \$5,000 fine</p>	<p>To reduce the penalty level by removing imprisonment.</p> <p>MTRCL has considered confining the scope, but decided to maintain status quo as it is necessary to regulate all kind of promotional activities at station to ensure a smooth flow of passengers.</p>

B. Other amendments proposed by MTRCL pursuant to the review

- **Improper dressing (MTR By-laws 28G, NWR Bylaw 23)**

MTRCL has re-assessed the nature and in the event of a breach the extent of the bylaws potential prejudice to passengers. It considers the current penalty of \$5,000 can be further reduced to \$2,000.

- **Failure to comply with signs (MTR By-laws 35 and NWR Bylaw 31)**

In order to maintain consistency with Hong Kong's road traffic laws the bylaws are to be amended to align them with the Road Traffic (Traffic Control) Regulations (Cap. 374). (i.e. from \$4,000 and two months imprisonment (MTR By-laws) and \$5,000 and three months imprisonment

(NWR Bylaw) to both \$5,000 and three months imprisonment for first conviction and \$5,000 and six months imprisonment for second and subsequent convictions.)

- **Spitting and littering (MTR By-laws 24 and NWR Bylaw 21)**  
MTRCL has re-assessed the nature and in the event of a breach the extent of the bylaws prejudice to passengers and MTRCL. It considers the current penalty of \$5,000 can be further reduced to \$2,000.

Source: Annexes I & II to LC Paper No. CB(1)557/08-09(08)

## Panel on Transport

## Subcommittee on Matters Relating to Railways

List of relevant papers on the review of the Mass Transit Railway By-laws  
and Mass Transit Railway (North-west Railway) Bylaw

Date of meeting	Committee	Minutes/Paper	LC Paper No.
29.6.2007	House Committee	Report of the Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger	CB(1)1997/06-07 <a href="http://www.legco.gov.hk/yr06-07/english/hc/papers/hc0629cb1-1997-e.pdf">http://www.legco.gov.hk/yr06-07/english/hc/papers/hc0629cb1-1997-e.pdf</a>
16.1.2009	Subcommittee on Matters Relating to Railways	Administration's paper on Government's assessment on MTR Corporation Limited's Bylaw review	CB(1)557/08-09(07) <a href="http://www.legco.gov.hk/yr08-09/english/panels/tp/tp_rdp/papers/tp_rdp0116cb1-557-7-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/tp/tp_rdp/papers/tp_rdp0116cb1-557-7-e.pdf</a>
		MTR Corporation Limited's paper on MTR Bylaw review	CB(1)557/08-09(08) <a href="http://www.legco.gov.hk/yr08-09/english/panels/tp/tp_rdp/papers/tp_rdp0116cb1-557-8-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/tp/tp_rdp/papers/tp_rdp0116cb1-557-8-e.pdf</a>
		Minutes of meeting	CB(1)1146/08-09 <a href="http://www.legco.gov.hk/yr08-09/english/panels/tp/tp_rdp/minutes/rdp20090116.pdf">http://www.legco.gov.hk/yr08-09/english/panels/tp/tp_rdp/minutes/rdp20090116.pdf</a>
4.6.2010	Subcommittee on Matters Relating to Railways	Administration's paper on MTR Bylaw review	CB(1)2089/09-10(01) <a href="http://www.legco.gov.hk/yr09-10/english/panels/tp/tp_rdp/papers/tp_rdp0604cb1-2089-1-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/tp/tp_rdp/papers/tp_rdp0604cb1-2089-1-e.pdf</a>

Date of meeting	Committee	Minutes/Paper	LC Paper No.
		MTR Corporation Limited's supplementary information paper on MTR Bylaw review	CB(1)2906/09-10(01) <a href="http://www.legco.gov.hk/yr09-10/english/panels/tp/tp_rdp/papers/tp_rdp0604cb1-2906-1-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/tp/tp_rdp/papers/tp_rdp0604cb1-2906-1-e.pdf</a>
		Minutes of meeting	CB(1)2844/09-10 <a href="http://www.legco.gov.hk/yr09-10/english/panels/tp/tp_rdp/minutes/rdp20100604.pdf">http://www.legco.gov.hk/yr09-10/english/panels/tp/tp_rdp/minutes/rdp20100604.pdf</a>
15.2.2012	Council meeting	Ir Dr Hon Raymond HO Chung-tai raised a question on the nuisance behaviour in MTR train compartments	<a href="http://www.info.gov.hk/gia/general/201202/15/P201202150171.htm">http://www.info.gov.hk/gia/general/201202/15/P201202150171.htm</a>
22.2.2012	Council meeting	Hon CHEUNG Hok-ming raised a question on the acts of contravention in the railway premises	<a href="http://www.info.gov.hk/gia/general/201202/22/P201202220190.htm">http://www.info.gov.hk/gia/general/201202/22/P201202220190.htm</a>
17.10.2012	Council meeting	Hon CHAN Hak-kan raised a question on the measures to crack down on parallel trade activities	<a href="http://www.info.gov.hk/gia/general/201210/17/P201210170476.htm">http://www.info.gov.hk/gia/general/201210/17/P201210170476.htm</a>
18.3.2015	Council meeting	Hon CHAN Chi-chuen raised a question on combating parallel trading activities	<a href="http://www.info.gov.hk/gia/general/201503/18/P201503180593.htm">http://www.info.gov.hk/gia/general/201503/18/P201503180593.htm</a>
13.5.2015	Council meeting	Hon WU Chi-wai raised a question on Mass Transit Railway By-laws and Mass Transit Railway (North-west Railway) Bylaw	<a href="http://www.info.gov.hk/gia/general/201505/13/P201505130392.htm">http://www.info.gov.hk/gia/general/201505/13/P201505130392.htm</a>

Date of meeting	Committee	Minutes/Paper	LC Paper No.
14.10.2015	Council meeting	Hon James TO Kun-sun raised a question on Mass Transit Railway By-laws and Mass Transit Railway (North-west Railway) Bylaw	<a href="http://www.info.gov.hk/gia/general/201510/14/P201510140450.htm">http://www.info.gov.hk/gia/general/201510/14/P201510140450.htm</a>
11.11.2015	Council meeting	Hon Gary FAN Kwok-wai raised a question on MTR student concessionary fares	<a href="http://www.info.gov.hk/gia/general/201511/11/P201511110475.htm">http://www.info.gov.hk/gia/general/201511/11/P201511110475.htm</a>
2.12.2015	Council meeting	Hon WONG Yuk-man raised a question on the monitoring of service performance of the MTR Corporation Limited	<a href="http://www.info.gov.hk/gia/general/201512/02/P201512020402.htm">http://www.info.gov.hk/gia/general/201512/02/P201512020402.htm</a>
19.4.2016	Subcommittee on Matters Relating to Railways	MTR Corporation Limited's paper on Mass Transit Railway By-laws and Mass Transit Railway (North-west Railway) Bylaw	CB(4)854/15-16(09) <a href="http://www.legco.gov.hk/yr15-16/english/panels/tp/tp_rdp/papers/tp_rdp20160419cb4-854-9-e.pdf">http://www.legco.gov.hk/yr15-16/english/panels/tp/tp_rdp/papers/tp_rdp20160419cb4-854-9-e.pdf</a>
		Minutes of meeting	CB(4)1282/15-16 <a href="http://www.legco.gov.hk/yr15-16/english/panels/tp/tp_rdp/minutes/rdp20160419.pdf">http://www.legco.gov.hk/yr15-16/english/panels/tp/tp_rdp/minutes/rdp20160419.pdf</a>